

COUNCIL AGENDA: 02-15-05
ITEM:



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Stephen M. Haase

SUBJECT: SEE BELOW

DATE: February 2, 2005

Approved

Date

COUNCIL DISTRICT: Citywide
SNI AREA: All

**SUBJECT: PROPOSED REVISIONS TO THE CITY COUNCIL POLICY ON
POST-CONSTRUCTION URBAN RUNOFF MANAGEMENT**

EXECUTIVE SUMMARY.

Under the provisions of the Federal Clean Water Act the San Francisco Bay Area Regional Water Quality Control Board (RWQCB) has jurisdiction over urban runoff pollution prevention programs for nine Bay Area counties including Santa Clara County. The RWQCB issues a NPDES storm water discharge permit for 15 Co-permittees, including the City of San Jose, within Santa Clara County.

The Post-Construction Urban Runoff Management Policy (Policy) is the City's primary document for implementing the provisions of the county-wide NPDES storm water permit. The Policy establishes criteria for requiring the installation of storm water treatment controls, such as detention/retention structures, infiltration basins and vegetated swales in new development and redevelopment projects.

In recent months the RWQCB has expressed concerns regarding portions of the Policy. Of particular concern to RWQCB staff is the Policy's Alternative Compliance program. RWQCB staff is especially interested in ensuring that Santa Clara County's implementation of storm water treatment control requirements is not only consistent with the Santa Clara County permit, but also with permits more recently issued to other counties in the Bay Area region. Planning staff, in collaboration with other City departments and the Redevelopment Agency, is proposing to revise the existing Policy in order to address concerns that have been expressed by

RWQCB staff. The revised Policy would:

- Require that Major Projects install Post-Construction Treatment Control Measures (TCMs) that would meet the hydraulic sizing criteria established by the Permit beginning on February 15, 2005.
- Clarify the procedural steps required to obtain approval of Alternative Compliance Measures when it is not practicable to install hydraulically sized storm water treatment control measures on a project site.
- Align San José's implementation of hydraulic sizing with the implementation of these new requirements in other Bay Area counties.
- Provide formatting changes and revisions to the "definitions section" to streamline the Policy.

RECOMMENDATION

Planning staff recommends that the City Council approve the revised City Council Policy on Post-Construction Urban Runoff Management (Policy No. 6-29).

BACKGROUND

The City Council first adopted a Post-Construction Urban Runoff Management Policy (Policy) in February 1998 to establish a framework for incorporation of measures for the reduction of storm water pollution from new development. In October 2003, the City Council adopted a revised version of the Policy to address new requirements in the National Pollutant Discharge Elimination System (NPDES) storm water permit issued to the City. The existing Policy (see Attachment 1) applies when the City issues a discretionary development permit for projects that create a major impervious surface area (paving and building rooftops) or major expansion of a use or building.

The San Francisco Bay Regional Water Quality Control Board (RWQCB) issues National Pollutant Discharge Elimination System (NPDES) permits that stipulate water quality requirements for dischargers to the San Francisco Bay and its tributaries. The RWQCB issues an NPDES Municipal Separate Storm Sewer System (MS4) Permit to the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP), consisting of the City of San Jose and 14 other local jurisdictions ("Co-permittees"). The other Co-permittees include the County of Santa Clara, twelve other municipalities in the county, and the Santa Clara Valley Water District. These Co-permittees are also referred to as the Dischargers. Together the 15 Co-permittees constitute SCVURPPP.

In October 2001, the RWQCB issued a revised NPDES permit (Order No. 01-119) establishing new requirements for hydraulic sizing (also called numerically sizing) of storm water treatment control measures and best management practices in new and redevelopment Projects. The

revised SCVURPPP Permit required the Co-permittees to begin implementation of hydraulic sizing for larger projects, “Group 1,” Projects in October 2003, and for small to medium sized projects, “Group 2,” Projects in April 2005. Hydraulically sized storm water treatment control measures are engineered in proportion to the amount of impervious surface created or replaced on a project site and are designed to treat pollutants for a specified volume of storm water. A Group 1 Project (referred to in the Policy as a Major Project) is defined as any project that creates or replaces one acre (43,560 square feet) or more of impervious surface.

Consistency with Other Bay Area Programs

NPDES permits for other County-wide storm water programs in the Bay Area region were not amended to require hydraulic sizing of treatment measures until February 2003, and the entities in other counties are not required to begin implementation of hydraulic sizing until February 15, 2005 for Group 1 and August 15, 2006 for Group 2.

In addition to having different dates for implementation of hydraulic sizing, the permits for jurisdictions outside Santa Clara County also contained explicit exemptions for some projects, that are not in the SCVURPPP permit, such as a limited single family home exemption, and an exemption for certain road repair and reconstruction projects. Further, the size threshold for “Group 2” in other countywide permits is 10,000 square feet, while the size threshold stated in the SCVURPPP permit was 5,000 square feet. The other county-wide permits also contain a clear definition of the type of “transit oriented” projects that may be exempted from the sizing requirements.

Regional Water Quality Control Board Concerns with San Jose Policy

After Council adopted the revised Policy in October 2003, RWQCB staff expressed several concerns with the Policy, and urged staff to recommend Council amendment of the Policy in order to align the Policy more closely with Regional Board expectations for control of storm water from new and redevelopment projects (see Attachment 2). The permit requires that storm water treatment Best Management Practices (BMPs) be implemented “to the maximum extent practicable” (MEP). The Policy requires hydraulic sizing for Major Projects, but allows other methods of determining compliance with the MEP standard (Alternative Compliance) when the City determines it to be impracticable to install numerically sized treatment into a specific development project. RWQCB staff has indicated that they believe the Policy’s current Alternative Compliance provisions would allow too many projects to be exempt from installing hydraulically sized storm water treatment BMPs.

ANALYSIS

Summary

Planning staff, in collaboration with other City departments and the Redevelopment Agency, proposes revising the existing Policy in order to address concerns that have been expressed by RWQCB staff. Staff’s recommendation will also align San José’s implementation of hydraulic

sizing with the implementation of these new requirements in other counties. The proposed revised Policy (see Attachment 3) would clearly require that Major Projects install Post-Construction Treatment Control Measures (TCMs) meeting the hydraulic sizing criteria set forth in the Permit beginning on February 15, 2005, except where it is impracticable to do so, and Alternative Measures are provided. This requirement is the key feature in all of the countywide stormwater permits issued by the RWQCB.

Consistent with all of the county-wide permits, the revised Policy defines “Major Project” to include: new development projects that create one acre (43,560 square feet) or more of impervious surface area; new streets, roads, highways and freeways (specifically, any newly constructed paved surface used primarily for the transportation of automobiles and other motorized vehicles) built under the City’s jurisdiction that create one or more acre (43,560 square feet) or more of impervious surface area; and Significant Redevelopment Projects. Single family homes that are not part of a larger common plan of development and certain road repair and reconstruction projects are explicitly exempt from the hydraulic sizing requirement.

Purpose

The purpose of the Policy has been updated to address concerns expressed by RWQCB staff and to delete the now obsolete language regarding phase-in of implementation for Major Projects.

Alternative Measures

Finding of Impracticability Required

Proposed revisions to the Policy would require the City, in all instances, to make a finding of impracticability prior to a project being eligible for consideration for alternative measures. The revised Policy also contains clearly restrictive criteria for determining impracticability.

Categories of Alternative Measures

Consistent with the provisions established by the Permit, the revised Policy retains three categories of Alternative Measures to installation of on-site measures meeting the hydraulic sizing criteria: (1) participation in a regional project; (2) the project is a “Smart Growth” Project or the City finds that the project provides an “equivalent benefit” based on the project sponsor’s documentation demonstrating that the project provides equal or better water quality/protection of beneficial uses; or (3) the project provides off-site treatment for an equivalent surface area. Projects that are not Smart Growth projects will be required to install hydraulically sized BMPs on-site or, if a finding of impracticability is made, either (a) participate in a regional BMP solution, (b) provide documentation that the proposed development itself would enhance water quality beneficial uses, or (c) provide equivalent off-site treatment for an equivalent area, such as a stream restoration project.

Definitions

The Definitions section has been moved to the back of the Policy for clarity and some of the definitions have amended. The major definition changes are to terminology related to **1)** the post-construction tree credit, **2)** smart growth projects, and **3)** the urban core. Key definition changes proposed are as follows:

Post-Construction Treatment Control Measure Tree Credit

The revised Policy will continue to allow up to 25% of on-site treatment requirements to be met through a “tree credit” allowing 100 square feet of credit for each new deciduous tree and 200 square feet of credit for each evergreen tree of a maximum of tree. To provide greater flexibility in site design, the requirement that new trees be at least 24-inch box in size has been deleted from the Policy.

Smart Growth Projects

For the purposes of the Policy, Smart Growth projects have been distilled into three categories: (a) Significant redevelopment Projects in the Urban Core (as defined in the Policy); (b) Low income, moderate-income or senior housing meeting one of the criteria of Government Code Section 65589.5 (h) (3) or (4) or 65915(b); (c) Brownfield Project (as defined in the Policy). Smart Growth projects could be considered by the City to provide an equivalent water quality benefit in lieu of installing hydraulically sized storm water treatment on-site if findings of impracticability are made.

Urban Core

The definition has been amended to further limit projects that would fit into this category. The radius from a specified transit facility has been reduced from ½ mile to ¼ mile to be consistent with the other county-wide permits, and the number of categories has been reduced. The following categories have been deleted: **1)** infill development of vacant or underutilized land within areas that are already developed with urban uses and served with urban infrastructure (e.g., sanitary sewers, water, etc.) and are not located on the urban fringe; **2)** residential development at a density of not less than eight dwelling units per acre and within one-half mile of existing development meeting any of the three criteria above; and **3)** “Transit Oriented Projects” and designated Redevelopment Areas (*see* Health and Safety Code §§ 25000, et seq. have been deleted. Revised criteria for transit oriented and redevelopment projects have been incorporated into the definitions.

Other Changes

General Guidelines

The General Guidelines of the proposed Policy have been amended to clearly require all new projects and redevelopment projects to implement BMPs and TCMs to the maximum extent

practicable. The General Guidelines of the Policy now also explicitly recommend that all development projects minimize impervious surfaces and incorporate storm water treatment into landscape features; the Policy also directs developers to the Bay Area Storm Water Management Agencies Association's (BASMAA's) *Start at the Source Design Guidance Manual* as a resource.

Phasing of Group 1

The Revised Policy would eliminate the now obsolete references that allowed phasing in of requirements for Major Projects up to February 15, 2005.

PUBLIC OUTREACH

Planning staff sent a hearing notice for the proposed Policy by e-mail to developers, consultants, engineers, representatives of environmental groups, and other stakeholder groups. Additional outreach consisted of posting the availability of the hearing notice on the Planning Divisions' web page and emailing the web page address to Bay Area representatives of stakeholder groups.

Planning staff has also prepared informational fact sheets on the proposed Policy revisions. These fact sheets have been distributed at the Planning Division's Developer Roundtable meeting on January 14, 2005.

Response to Comments received by RWQCB Staff

A copy of the draft policy was provided to Regional Water Quality Control Board staff in December 2004. On January 7, 2005 RWQCB staff provided a letter commenting on the proposed revisions to the Policy (see Attachment 4). In the letter RWQCB staff generally indicated support for the majority of the proposed changes to the Policy. The comments provided addressed five specific items: (1) timing for implementation of Group 2 Projects; (2) the proposed definition of impracticability; (3) clarification of the need for an impracticability finding for Alternative Measures for a project that is unable to provide on site hydraulic sizing; (4) explanation of the proposed criteria for density intensification projects; and (5) the use of Inlet filters/oil water separators as storm water treatment control measures. City staff met with RWQCB staff on January 13, 2005 to discuss these comments and provide City staff responses.

1. Implementation of Group 2 Projects. RWQCB staff expressed concern that the Policy does not address implementation of Group 2 projects. As specified in the Permit, the size threshold for Group 2 Projects would be more restrictive than the Group 1 size, requiring many more projects to install hydraulically sized storm water treatment controls. The date for SCVURPPP Co-permittee implementation of Group 2 is still under discussion with RWQCB staff. The date for implementation of Group 2 for other programs is August 15, 2006. As currently worded, the SCVURPPP Permit requires implementation of Group 2 to begin on April 15, 2005. To address Group 2, several options are available, including additional revisions to the Policy. In conjunction with SCVURPPP, City staff is

continuing to discuss with RWQCB staff how to implement Group 2 in a manner that is substantially consistent with the other Bay Area counties' programs' Permits.

2. Impracticability. RWQCB staff has expressed disagreement regarding the Policy's definition of impracticability: specifically, the provision that states that installing numerically sized treatment control measures could be found to be impracticable if installation of these measures would result in the inability of the project sponsor or City to comply with other regulatory requirements at the federal, state and local levels (for example, building code requirements). RWQCB staff has indicated that a local regulation cannot supersede a federal regulation (i.e. the Clean Water Act.), and therefore RWQCB staff has asked for that provision to be removed from the Policy.

City staff has responded that local Municipal Code regulations that relate to development and construction are based upon widely accepted practices such as the Uniform Building Code (UBC), which are recognized by federal and state agencies to protect health and safety. Other Municipal Code regulations are based on state and federal regulations such as Title 24, the Americans with Disabilities Act (ADA), the California Government Code, Health and Safety Code, and the Public Resources Code. It is impossible to anticipate at the policy stage each and every possible scenario in which one of these regulations might apply to a project. City staff has also pointed out that impracticability does not exempt a project from providing hydraulic sizing, it simply means that an Alternative Measure must be provided.

3. Alternative Measures. RWQCB staff is requesting clarification that the City may only exempt Smart Growth Projects after making a finding of impracticability. Staff has confirmed that this is the intent of the revised Policy. A flowchart depicting this process is attached (Attachment 5).
4. Floor Area Ratio. RWQCB staff has indicated that the floor area ratio provision of the Urban Core definition may be too liberally applied to broad areas of the City. City staff has responded that the intent of this provision is to support development of projects that increase density in lieu of more land-consuming designs. For example, if the proposed revisions to the Citywide Transportation Level of Service Policy and North San Jose Area Development Policy are approved, the City anticipates a marked increase in applications for industrial and commercial redevelopment that would increase FARs above 1. Moreover, in response to RWQCB staff comments City staff has proposed a maximum site size of five acres to be included in this provision. The five acre cap is consistent with the size limit cap for categorically exempt provisions in CEQA.
5. Inlet Filters/Oil Water Separators. RWQCB staff has expressed disagreement with the allowance of insert (inlet) filters and oil/water separators as treatment control measures, as referenced in the Policy. Insert filters and oil/water separators are listed as accepted treatment measures in the Policy, along with biofilters and vegetative swales. Board staff has expressed the belief that insert filters and oil water separators are not effective storm water treatment control measures.

Both oil/water separators and inlet filters are recognized as acceptable treatment measures and are listed among other acceptable storm water treatment BMPs in the most recent version of the *California Storm water Quality Association (CASQA) New Development and Redevelopment Handbook*. The *CASQA Handbook* is a recognized reference in the selection of storm water treatment BMPs.

Conclusion

In conclusion, the revised Policy has been structured to address concerns expressed by the Regional Water Quality Control Board staff. The proposed revisions would limit the number and types of development projects that would meet the impracticability definition, and as a result, fewer projects would qualify for Alternative Compliance. In addition, the phasing provision of the Policy would be eliminated.

COORDINATION

Preparation of the proposed revisions to the Policy was coordinated with the Environmental Services Department, the Department of Public Works, the Redevelopment Agency, and the City Attorney's Office.

CEQA

This project was found to be Exempt under the provisions of the California Environmental Quality Act (CEQA) under file No PP 05-012.

STEPHEN M. HAASE, DIRECTOR
Planning, Building and Code Enforcement

Attachments:

- Existing Post-Construction Urban Runoff Management Policy (Attachment 1)
- May 2004 concerns expressed by Regional Water Quality Control Board (Attachment 2)
- Proposed Post-Construction Urban Runoff Management Policy (Attachment 3)
- January 2005 letter from Regional Water Quality Control Board (Attachment 4)
- Alternative Compliance flowchart (Attachment 5)